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Meeting of States Parties
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Draft decisions on budgetary matters of the International Tribunal for the Law of the Sea

Explanatory note

Working paper prepared by the Tribunal

1. Under the United Nations Financial Regulations, which are applicable to the Tribunal mutatis mutandis, the financial administration of the Tribunal is to be organized in an effective and economic way (regulation 10.1). Pursuant to that provision, which is also reflected in the draft Financial Regulations of the Tribunal as contained in document SPLOS/WP.14, the Financial Regulations applicable to the Tribunal have to provide for transparent solutions that are also workable in practice.

2. The first five years of operation of the Tribunal have indicated the need for a certain degree of flexibility in order to respond adequately to specific or unforeseeable requirements. This covers the following:

Transfer between appropriation sections

3. Regulation 4.5 of the Financial Regulations of the United Nations provides that "no transfer between appropriation sections may be made without authorization by the General Assembly".

4. In this respect, draft regulation 4.5, as agreed by the Working Group at the Twelfth Meeting of States Parties, provides that transfers between appropriation sections may only by made "to the extent authorized by the Meeting of States Parties".

5. However, transfer between appropriation sections might be necessary in exceptional circumstances. For practical reasons, it would not be always possible to convene a special Meeting of States Parties to deal with such issues.

6. The Tribunal has therefore proposed to add to draft regulation 4.5, as agreed by the Working Group at the Twelfth Meeting of States Parties, a provision to the

02-29973 (E)

effect that such transfer could also be made in exceptional circumstances, in accordance with criteria to be agreed upon by the Meeting of States Parties.[1] This wording reflects the contents of regulation 4.8 as contained in the draft Financial Regulations of the International Criminal Court (PCNICC/2001/1/Add.2).

7. It may also be noted that this approach had been adopted in the past by the Meeting of States Parties. Reference may be made in this context to its decisions on budgetary matters of the Tribunal for 1999 (SPLOS/L.9) which, in paragraph 3, provide as follows: "The Tribunal shall be authorized to transfer funds among appropriation sections to deal with cases which may arise during the budget period."

8. For these reasons, it is suggested that a similar decision be taken by the Meeting of States Parties with respect to the financial periods 2002 and 2003. A draft decision is contained in the annex to the present note (para. 1).

Decisions involving expenditures

9. Regulation 13.2 of the Financial Regulations of the United Nations reads as follows:

> "Where, in the opinion of the Secretary-General, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the General Assembly has made the necessary appropriations, unless the Secretary-General certifies that provision can be made under the conditions of the resolution of the General Assembly relating to unforeseen and extraordinary expenses."

10. The Tribunal should be able to deal with cases, in particular a case involving urgent proceedings, even if the expenditure relating thereto could not be made from the existing appropriations. Such a decision should be taken without delay and, at the same time, without prejudice to the competence of the Meeting of States Parties in financial matters. It should therefore be provided for, in the Regulations, that such a decision could be taken on the basis of an applicable decision of the Meeting of States Parties relating to such unforeseen and extraordinary expenses.

11. For this reason, the Tribunal proposes that the wording of draft regulation 13 of the Financial Regulations of the Tribunal be retained as approved by the Tribunal in 1998.[2] The suggested provision specifies that, where the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the Meeting of States Parties has made the necessary appropriations or unless the Registrar certifies that provision can be made under the conditions of an applicable decision of the Meeting of States Parties relating to unforeseen and extraordinary expenses.

12. For the same reason, the Tribunal proposes to the Meeting of States Parties to adopt a decision relating to unforeseen and extraordinary expenses in order for the Tribunal to deal with cases which would be submitted to it in 2002 and 2003, to the extent that the expenditure incurred by such cases could not be made from the Working Capital Fund. A draft decision is contained in the annex to the present note (para. 2), the wording of which is based on the resolution adopted on 24 December 2001 by the United Nations General Assembly in the matter of unforeseen and extraordinary expenses.[3]

Notes

[1] See draft Regulation 4.5 as contained in the annex to the letter dated 15 March 2002 from the President of the International Tribunal for the Law of the Sea to the President of the Meeting of States Parties.

[2] See draft Regulation 13.2 as contained in the annex to the letter dated 15 March 2002 from the President of the International Tribunal for the Law of the Sea to the President of the Meeting of States Parties.

[3] General Assembly resolution 56/256.

Annex

Draft decisions on budgetary matters of the International Tribunal for the Law of the Sea

(Proposed by the Tribunal)

1. The Tribunal is authorized to transfer funds between appropriation sections when it is necessary to deal with cases which may arise during the budget periods 2002 and 2003.

2. The Meeting of States Parties authorizes the Registrar to enter into commitments in 2002 and 2003, not exceeding a total of 1 million United States dollars, to meet unforeseen and extraordinary expenses, provided that such commitments, as the President of the Tribunal certifies, relate to expenses required to deal with cases submitted to the Tribunal and the expenditure cannot be made from the Working Capital Fund.

3. The Meeting of States Parties further decides that the Registrar shall report to the Meeting of States Parties at its next meeting any transfer made pursuant to paragraph 1 and any commitment made pursuant to paragraph 2, together with the circumstances relating thereto, and shall submit supplementary budget proposals to the Meeting of States Parties in respect of any commitments made pursuant to paragraph 2.